

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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KYLE HENDRICKS,

Plaintiff,

-against-

N.Y.C. DEPT. OF CORRECTIONS, SICK  
CALL, and DOCTOR CALVO,

Defendants.  
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KEVIN NATHANIEL FOX  
UNITED STATES MAGISTRATE JUDGE

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>10/28/11</u>
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**REPORT & RECOMMENDATION**

11 Civ. 1206 (PAE)(KNF)

TO THE HONORABLE PAUL A. ENGELMAYER, UNITED STATES DISTRICT JUDGE

On May 2, 2011, the plaintiff, Kyle Hendricks ("Hendricks"), filed an amended complaint in this action.

Fed. R. Civ. P. 4(m) provides in pertinent part, that "[i]f a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. P. 41(b) authorizes the district court to dismiss an action for failure to prosecute, or to comply with a court order. See LaSane v. Hall's Sec. Analyst, Inc., 239 F.3d 206, 209 (2d Cir. 2001); Lucas v. Miles, 84 F.3d 532, 534 -35 (2d Cir. 1996).

Hendricks failed to serve a copy of the summons and amended complaint upon any of the defendants, within 120 days of filing his amended complaint with the court. In addition, Hendricks was released from the custody of the New York City Department of Corrections and failed to provide the court with his current address, as he is required to do. Therefore, it is not possible to communicate with him.

## RECOMMENDATION

For the reasons set forth above, I recommend that the instant action be dismissed pursuant to Fed. R. Civ. P. 4(m) and 41(b).


## FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b)(2) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections, and any responses to objections, shall be filed with the Clerk of Court, with courtesy copies delivered to the chambers of the Honorable Paul A. Engelmayer, 500 Pearl Street, Room 670, New York, New York 10007, and to the chambers of the undersigned, 40 Centre Street, Room 540, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Engelmayer.

*Failure to file objections within fourteen (14) days will result in a waiver of objections and will preclude appellate review. See Thomas v. Arn, 474 U.S. 140, 470 (1985); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 58-59 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 (2d Cir. 1983).*

Dated: New York, New York  
October 28, 2011

Respectfully submitted,

  
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KEVIN NATHANIEL FOX  
UNITED STATES MAGISTRATE JUDGE